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Paula F. Durr

Name of Person Mailing

Signature of Person Mailing

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P&G Case 8786

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of :
Margaret Henderson Hasse : Confirmation No. 7943
Serial No. 09/993,988 : Group Art Unit 3761
Filed November 16, 2001 : Examiner Michele M. Kidwell

For Tampon with Fluid Wicking Overwrap with Skirt Portion

BRIEF ON APPEALS

Mail Stop Appeal Brief - Patents
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TECHNOLOGY CENTER R3700

Dear Sir:

Enclosed, pursuant to 37 C.F.R. 1.192(a), is Appellant's brief on Appeal for the above application. The Brief is being forwarded in triplicate.

The fee for this Brief on Appeal is \$330.00 37 CFR 1.17(c).

The Director is hereby authorized to charge the above fee, or any additional fees that may be required, or credit any overpayment to Deposit Account No. 16-2480 in the name of The Procter & Gamble Company. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

By

Bridget D. Ammons

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For Tampon with Fluid Wicking
Overwrap with Skirt Portion

APPELLANT'S BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir,

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TECHNOLOGY CENTER R3700

This appeal of Claims 1, 3-7, 9 and 11-20 is currently pending in the above application. Claims 1, 3-4, 6-7, 9, 11 and 13-20 were finally rejected by the Examiner in an Office Action dated December 30, 2003. A timely Notice of Appeal was submitted by the by Appellants on January 11, 2004. Appellants' brief is submitted in triplicate.

REAL PARTY IN INTEREST

The Appellants who are named in the caption of the Brief have assigned this application to The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

Appellants, Appellants' legal representative, and the assignee are not aware of any appeals or interferences which would be directly affected by or have a bearing on the Board's decision in the pending Appeal.

STATUS OF CLAIMS

Claims 1, 3-7, 9, 11-20 are pending in the above application. Claims 1, 3-4, 6-7, 9, 11 and 13-20 are finally rejected and are being appealed. Claims 5 and 12 are objected to as being dependent upon a rejected base claim. A copy of Claims 1, 3-4, 6-7, 9, 11 and 13-20 on appeal appears in the attached Appendix A.

STATUS OF AMENDMENTS

Appellants' have not filed an amendment subsequent to the Final rejection of the claims. The Appellants' are appealing from a Final rejection of Claims mailed on December 30, 2003 in which the Examiner considered the response to an Office Action filed on August 14, 2003 to be unpersuasive.

SUMMARY OF INVENTION

This invention relates to catamenial tampons having a compressed absorbent member comprising an absorbent material. The compressed absorbent member of the tampon has an inner region and an exterior surface. The absorbent material has a first surface opposed to a second surface and an insertion end opposed to a withdrawal end. The fluid wicking overwrap substantially covers the first surface and the second surface of the absorbent material. The fluid wicking overwrap extends beyond the withdrawal end of the absorbent material to form a skirt portion. The fluid wicking overwrap substantially covers the exterior surface of the compressed absorbent member and a portion of the fluid wicking overwrap substantially permeates the inner region of the compressed absorbent member.

ISSUES

(1) Whether Claims 1, 7, 9, 14, 16-20 are unpatentable under 35 U.S.C. § 102(e) as being anticipated by Balzar. (U.S. Patent No. 5,891,123).

(2) Whether Claims 3-4, 6, 11 and 15 are unpatentable under 35 U.S.C. § 103 (a) as being obvious over Balzar. (U.S. Patent No. 5,891,123) in view of Sheldon, et al (U.S.

Patent No. 5,084,038).

GROUPING OF CLAIMS

Claims 1, 3-4, 6-7, 9, 11 and 13-20 are within the same patentable grouping and will stand and fall together.

ARGUMENTS

(1) Whether Claims 1, 7, 9, 14, 16-20 are unpatentable under 35 U.S.C. § 102(e) as being anticipated by Balzar. (U.S. Patent No. 5,891,123).

Claims 1, 7, 9, 11 and 16 - 20 are rejected under 35 U.S.C. § 102(b) as being anticipated by Balzar (U.S. Patent No. 5,891,123).

Appellants respectfully traverse the rejection.

The Examiners states that Balzar discloses a tampon and a method of making a tampon, where the tampon is made of absorbent material that is compressed into an absorbent material with surfaces and ends, as claimed. The Examiner states that Balzar discloses an overwrap that is fluid wicking and has a skirt portion that substantially covers the exterior surface of the absorbent member and permeates into an inner region, as claimed. The Examiner further states that the length of the skirt is inherent in the disclosure of Balzar. Appellants respectfully contend that Balzar does not anticipate the amended independent Claims 1, 9 and 16 because it does not disclose a fluid wicking overwrap substantially covering the first surface and the second surface of the absorbent material.

Claim 1 recites a catamenial tampon that comprises a compressed absorbent member having an inner region and an exterior surface. The compressed absorbent member comprises an absorbent material having a first surface opposed to a second surface, an insertion end opposed to a withdrawal end, and a fluid wicking overwrap substantially covering the first and the second surface of the absorbent material. The fluid wicking overwrap extends beyond the withdrawal end of the absorbent material to form a skirt portion. As amended Claim 9 has the same limitations as Claim 1 but further

comprises a withdrawal means for removal of the tampon that is attached to the compressed absorbent member. Claim 16 comprises a method of making the tampon of Claim 1.

Balzar does not teach each and every element in Claims 1, 9 and 16. Balzar discloses a tampon comprising an absorbent member which is "positioned on top of and aligned with the cover" (See column 5 lines 8-11) or "overlaid on the cover" (See column 5, lines 37-39). At best, Balzar discloses an overwrap covering one surface of the absorbent member. Balzar does not teach or disclose a fluid wicking overwrap that substantially covers both the first surface and the second surface of the absorbent member, as in Appellants' Claim 1, 9 and 16. Therefore, Balzar cannot anticipate the Appellants' Claims 1, 9 and 16. Claim 7 depends from 1. Claim 11 depends from Claim 9. Claims 16-20 depend from Claim 16. Therefore, Balzar does not render Claims 1, 7, 9, 11 and 16-20 of the Appellants' present invention unpatentable under 35 U.S.C. § 102 (b).

(2) Whether Claims 3-4, 6, 11 and 15 are unpatentable under 35 U.S.C. § 103 (a) as being obvious over Balzar. (U.S. Patent No. 5,891,123) in view of Sheldon, et al (U.S. Patent No. 5,084,038).

Claims 3, 4, 6, 11 and 15 are rejected under 35 U.S.C. § 103 (a) as being unpatentable over Balzar (U.S. Patent No. 5,891,123), in view of Sheldon, et al. (U.S. Patent No. 5,084,038).

The Appellants respectfully traverse the rejection.

The Examiner admits that Balzar does not disclose that the overwrap can be made of natural and synthetic fibers in the claimed ratio. The Examiner states that Balzar lists numerous materials that are suitable for the overwrap and also states that natural or synthetic fibers are suitable, but does not disclose combination of natural and synthetic fibers. The Examiner states that Sheldon discloses a tampon that has an overwrap covering the absorbent material of the tampon. The Examiner states that Sheldon discloses a particularly useful material can be made of 15% rayon and 85% polyester. The Examiner contends that it would have been obvious to one of ordinary skill in the art

at the time the invention was made to provide Balzar with the preferred overwrap of Sheldon so that an overwrap with useful characteristics can be obtained in the tampon of Balzar.

Claim 1 recites a catamenial tampon that comprises a compressed absorbent member having an inner region and an exterior surface. The compressed absorbent member comprises an absorbent material having a first surface opposed to a second surface and an insertion end opposed to a withdrawal end and a fluid wicking overwrap substantially covering the first and the second surface of the absorbent material. The fluid wicking overwrap extends beyond the withdrawal end of the absorbent material to form a skirt portion. As amended, Claim 9 has the same limitations as Claim 1, but further comprises a withdrawal means for removal of the tampon, is attached to the compressed absorbent member. Claim 16 comprises a method of making the tampon of Claim 1.

Appellants respectfully submit that if one looks to the Appellants' invention and the references as a whole, the combination of Balzar and Sheldon, et al. does not teach an every element in Claims 1, 9 and 16. Balzar discloses a tampon comprising an absorbent member which is "positioned on top of and aligned with the cover" (See column 5 lines 8-11) or "overlaid on the cover" (See column 5, lines 37-39). At best, Balzar discloses an overwrap covering one surface of the absorbent member. Balzar does not teach or disclose a fluid wicking overwrap that substantially covers both the first surface and the second surface of the absorbent member, as in Appellants' Claim 1, 9 and 16. As well, Sheldon does not teach or disclose a fluid wicking overwrap that substantially covers the first surface and the second surface of the absorbent material. Thus, Balzar in combination with Sheldon, et al. does not render the Appellants' Claim 1, 9 and 16 obvious. Claims 3, 4 and 6 depend from Claim 1. Claims 11 and 15 depend from Claim 9. Claims 17-20 depend from Claim 16. Accordingly, Balzar in combination with Sheldon, et al. does not render Claims 3, 4, 6, 11 and 15 of the Appellants' present invention unpatentable under 35 U.S.C. § 103 (a).

SUMMARY

In view of all of the above, Appellants respectfully submit that Claims 1, 7, 9, 11 and 16-20 are not anticipated by Balzar (U.S. Patent No. 5,891,123) and Claims 3, 4, 6, 11 and 15 as being obvious over Balzar (U.S. Patent No. 5,891,123), in view of Sheldon, et al. (U.S. Patent No. 5,084,038). Accordingly, Appellants respectfully request the Board of Patent Appeals and Interferences to reverse the Examiner's rejection, and remand with directions to allow all of the claims of the present application.

Respectfully submitted,

By Bridget D. Ammons

Bridget D. Ammons
Attorney for Appellants
Registration No. 52,555
(513) 634-1873

Date: January 22, 2004

Cincinnati, OH

APPENDIX A

Claim 1. A catamenial tampon comprising:

a compressed absorbent member having an inner region and an exterior surface, said compressed absorbent member comprising an absorbent material;

said absorbent material having a first surface opposed to a second surface and an insertion end opposed to a withdrawal end;

a fluid wicking overwrap substantially covering said first surface and said second surface of said absorbent material;

said fluid wicking overwrap extending beyond the withdrawal end of said absorbent material to form a skirt portion;

said fluid wicking overwrap substantially covering said exterior surface of the compressed absorbent member; and

a portion of said fluid wicking overwrap substantially permeating said inner region of said compressed absorbent member.

Claim 3. A tampon according to Claim 1 wherein the fluid wicking overwrap comprises synthetic fibers and natural fibers.

Claim 4. A tampon according to Claim 3 wherein the ratio of the synthetic fibers to natural fibers is from about 90:10 to about 30:70.

Claim 6. A tampon according to Claim 1 wherein said fluid wicking overwrap is hydroentangled and comprises about 50% rayon and about 50% polyester.

Claim 7. A tampon according to Claim 10 wherein said skirt portion extends from about 5 mm to about 30 mm from said withdrawal end of said absorbent material.

Claim 9. A catamenial tampon comprising:

a compressed absorbent member having an inner region and an exterior surface, said compressed absorbent member comprising an absorbent material;

said absorbent material having a first surface opposed to a second surface and an insertion end opposed to a withdrawal end;

a fluid wicking overwrap substantially covering said first surface and said second surface of said absorbent material;

said fluid wicking overwrap extending beyond the withdrawal end of said absorbent material to form a skirt portion;

said fluid wicking overwrap substantially covering said exterior surface of the compressed absorbent member;

a portion of said fluid wicking overwrap substantially permeating said inner region of said compressed absorbent member; and

a withdrawal means for removal of said tampon attached to said compressed absorbent member and extending beyond at least said withdrawal end.

Claim 11. A tampon according to Claim 9 wherein the fluid wicking overwrap is 100% rayon.

Claim 13. A tampon according to Claim 9 wherein said fluid wicking overwrap comprises a 50% rayon 50% polypropylene thermally bonded blend.

Claim 14. A tampon according to Claim 9 wherein said skirt portion extends from 2 mm to 20 mm from said withdrawal end of said absorbent material.

Claim 15. A tampon according to Claim 14 wherein the fluid wicking overwrap comprises synthetic fibers and natural fibers.

Claim 16. A process for making a tampon comprising:

- (a) providing an absorbent material having a first surface opposed to a second surface and an insertion end opposed to a withdrawal end;
- (b) providing a fluid wicking overwrap;
- (c) creating a wrapped absorbent by substantially covering said first surface and second surface of said absorbent material with said fluid wicking overwrap; said fluid wicking overwrap extending beyond said withdrawal end of said absorbent material to form a skirt portion.
- (d) compressing said wrapped absorbent to form a compressed absorbent member having a vaginally insertable shape, said compressed absorbent member having an inner region and an exterior surface;

wherein upon compression said fluid wicking overwrap substantially covers the exterior surface of the compressed absorbent member and substantially permeates the inner region of the compressed absorbent member.

Claim 17. A process according to Claim 16 further comprising the step of providing a withdrawal means for removal of said tampon and attaching said withdrawal means to said wrapped absorbent prior to compression.

Claim 18. A process according to Claim 16 further comprising the step of providing an insertion means for insertion of said tampon and positioning said compressed primary absorbent within said insertion means.

Claim 19. A process according to Claim 16 further comprising the step of rolling the wrapped absorbent before compression.

Claim 20. A process according to Claim 16 wherein the skirt portion extends at least about 3 mm from the withdrawal end.